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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[REDACTED]

FILE [REDACTED] Office: COPENHAGEN, DENMARK

Date: **JAN 09 2004**

IN RE: Applicant:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[REDACTED]

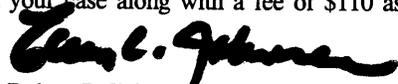
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wieman, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Copenhagen, Denmark, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Sweden who was found by a consular officer to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having remained unlawfully present in the United States for more than one year. The applicant entered the United States on January 20, 2000 at Honolulu, Hawaii under the Visa Waiver Program (VWP). The applicant remained in the United States until May 27, 2002. On May 27, 2002, the applicant attempted to reenter the United States from Canada and was refused entry for remaining in the United States without lawful status under VWP guidelines. The applicant married a U.S. citizen on November 15, 2001. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) in order to travel to the United States to reside with his U.S. citizen spouse.

The officer in charge (OIC) concluded that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the application accordingly.

On appeal, the applicant's wife, [REDACTED] contends that the OIC's decision in denying the Application for Waiver of Grounds of Excludability (Form I-601) was not correct because it did not consider all of the proffered evidence demonstrating extreme hardship.

The record includes an affidavit of the applicant's wife, dated April 15, 2003; medical records for the applicant's wife; a brief signed by the applicant's attorney, dated November 21, 2002; a declaration of the applicant's wife, undated; a copy of the applicant's Swedish passport; copies of the U.S. military identification cards for the applicant and his wife; a copy of an informational article addressing neurocardiogenic syncope; letters of support for the applicant and his wife; a copy of the marriage certificate for the couple and copies of income tax return and financial statements for the applicant's wife. The entire record was considered in rendering a decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

. . . .

(II) has been unlawfully present in the

United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . . .

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security, (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from violation of section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present application is that suffered by the applicant's wife. The record establishes that the applicant's mother is a naturalized U.S. citizen. However, the record does not evidence a claim of extreme hardship for the applicant's mother.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel and the applicant's wife contend that departing the United States would impose extreme hardship upon the applicant's wife as her entire family resides in the United States; she has no family in Sweden; she does not speak Swedish; and her career in the U.S. military renders her unable to leave the country. See *Affidavit of Michelle Annette Nelson*, dated April 15, 2003. The applicant's wife also states that she suffers from neurocardiogenic syncope and that she has recently been diagnosed

with Human Papillomavirus in the strain that could cause cervical cancer. *Id.* While Mrs. [REDACTED] medical suffering is regrettable, the record does not establish that medical treatment for her conditions is unavailable or insufficient in Sweden. Further, while neurocardiogenic syncope results in pooling of the blood and renders Mrs. [REDACTED] unable to stand for extended periods of time, the record does not establish that she is unable to hold a job. On the contrary, the record evidences a consistent history of employment for the applicant's wife. See G-325A Biographic Information for [REDACTED] dated July 22, 2002.

While counsel asserts hardship to the applicant's wife if she departs the United States, the record does not establish extreme hardship to her if she remains in the United States. The AAO notes that as a U.S. citizen, the applicant's wife is not required to leave the United States as a result of the adjudication of the applicant's waiver. The record establishes that the applicant's wife is gainfully employed and that the applicant is unemployed. The applicant's wife asserts that she suffers financially as a result of her separation from her husband. However, the record does not establish that the applicant cannot obtain employment in Sweden beyond stating that the economy in his home country is unstable. See *Affidavit of* [REDACTED]. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from her husband. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no

purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.